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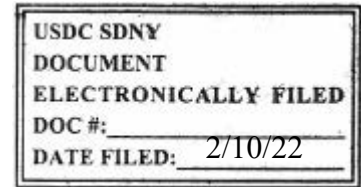
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February 9, 2022

VIA ECF

The Honorable Alison J. Nathan, U.S.D.J.
U.S. District Court for the Southern District of New York
Thurgood Marshall U.S. Courthouse
40 Foley Square, Courtroom 2102
New York, New York 10007



Re: Gebrial Rasmy v. Marriot International, Inc., et al.
Civil Action No. 1:16-cv-4865-AJN-OTW
Motion to Adjourn April 11, 2022 Trial Date

Your Honor:

Defendants submit this concise letter-motion to respectfully request this Court adjourn the trial date due to Defendants' pending motion to dismiss.

On January 19, 2022, Defendants moved to dismiss Plaintiff's Complaint because of, among other reasons, his violation of this Court's September 14, 2021 Order compelling him to appear for a deposition. (Doc. 218). In the alternative to dismissal, Defendants requested this Court compel Plaintiff to appear for his deposition, hold him in contempt for his ongoing violation of the Court's September 14th Order, and adjourn the April 11, 2022 trial date. Plaintiff's response is due on February 16 and Defendants' reply is due on March 2, 2022. (Doc. 220).

The trial is currently set to commence on April 11, 2022, only five weeks after Defendants' reply brief is due. If the case is not dismissed outright, this leaves an unreasonably short window for Defendants to depose Plaintiff and prepare for trial. (Doc. 217).

A schedule may be modified for good cause and with the Court's consent. *Fed. R. Civ. P.* 16(b)(4); *see Eastern Profit Corp. Ltd. v. Strategic Vision US LLC*, No. 18-CV-2185 (LJL), 2020 WL 6048158, at *2 (S.D.N.Y. Oct. 13, 2020). "Whether good cause exists turns on the diligence of the moving party." *BPP Illinois, LLC v. Royal Bank of Scotland Grp. PLC*, 859 F.3d 188, 195 (2d Cir. 2017); *accord Elisens v. Cayuga Cty. Mental Health*, No. 519CV01236LEKTWD, 2020 WL 8081938, at *2 (N.D.N.Y. Aug. 26, 2020) (adjourning trial date to allow defendants to move to dismiss); *United States v. Buie*, No. 05 CR. 664 (RCC), 2006 WL 2585604, at *4 (S.D.N.Y. Sept. 7, 2006) (adjourning conference until decision on pending motion to dismiss issued).

As stated in Defendants' motion to dismiss (Doc. 219), Plaintiff's abject refusal to appear for his deposition is grounds for dismissal. However, Defendants' motion to dismiss will not be

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fully briefed until March 2, 2022, leaving less than one month before trial for the Court to adjudicate the motion. If the case proceeds, that respectfully leaves insufficient time to depose Plaintiff, receive the deposition transcript, and prepare for trial. Moreover, Defendants should not be forced to incur the expense, time, and burden of preparing for trial while their motion to dismiss is pending. *See, e.g., Sower v. Chase Home Fin., L.L.C.*, No. 13-15274, 2015 WL 4276146, at *4 (E.D. Mich. July 14, 2015) (interests of justice requires adjournment of trial).

Accordingly, Defendants respectfully move to adjourn the April 11, 2022 trial date to afford Defendants sufficient time to complete pending discovery and prepare for trial following adjudication of the pending motion to dismiss.

At the time of this submission, all attempts to reach Mr. Rasmy for his position on this application were unsuccessful.

Thank you in advance for the Court's courtesy.

Respectfully submitted,

FORD & HARRISON LLP

s/Mark A. Saloman

MARK A. SALOMAN

Partner

MAS/mmc

cc: Mr. Gebrial Rasmy, *pro se* (VIA ECF)

WSACTIVELLP:12895808.1

The Court ORDERS Mr. Rasmy to submit a response to Defendants' request, if any, by February 28, 2022. The Clerk's office is respectfully directed to mail a copy of this Memo Endorsement to Mr. Rasmy and note the mailing on the public docket.

SO ORDERED. 2/10/22

